

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD W. HACKENBERG and DEPARTMENT OF THE AIR FORCE,
ELMENDORF AIR FORCE BASE, Anchorage, AK

*Docket No. 03-235; Submitted on the Record;
Issued May 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of his duties.

On October 22, 2001 appellant, then a 43-year-old electronics mechanic, filed a traumatic injury claim alleging that he had emotional stress as a result of a remark by his supervisor, which he viewed as a threat:

“October 17, 2001 upon arriving to work I was immediately called to Barbara [K.] Peryam’s office and asked to close the door. She asked me if I was having a problem. I said no. She asked again if I had a problem. Again, I said no. She said I was be (sic) having a problem because I should have been able to fix the problem with the fire alarm circuit at b[ui]ld[ing] 11369, Base Operations, much faster than I did. She told me I must have a mental problem. She began yelling at me that I did not know basic troubleshooting techniques. She took an 8 and a half by 11 white note pad and shoved it at me and insisted I explain how to troubleshoot a circuit she had drawn on the paper. I asked why she was doing this. She shook a pointed finger at me and yelled back, ‘You do n[o]t know what your (sic) doing with even the most basic circuits do you?’ At this point I stated, ‘Barb, I want a union representative present.’ She yelled even louder that she did n[o]t care if a union steward was present and that I did n[o]t know what I was doing as she shook her finger at me angrily and again pointed at the paper and insisted I show her how I would troubleshoot this circuit diagram. I told her if she wanted to know if I knew what I was doing why doesn’t she ask Larry or Joe. She yelled back poking a pointed finger at me, ‘You do n[o]t know what your doing and they [ha]ve been covering for you.’ I told her I could n[o]t believe that she was saying that. I tried to explain to her that none of us in the shop feel we can explain anything to her without getting an immediate argument from her and I stated I do n[o]t like to argue. She stated that the workload was big. I told her I knew that and that I feared that with this mounting workload that she would yell

at me if she did n[o]t think I was working hard enough. She replied, 'I will yell at you and you all need to be afraid.' I said that [i]s intimidation and is that what you want. She replied, "Yes, you all need to fear me."

Appellant submitted a psychiatric report diagnosing adjustment disorder with anxious mood and relating this condition to stress at work. He also submitted a witness statement supporting that Ms. Peryam's voice grew louder during the October 17, 2001 meeting "and I could tell by the tone that she was getting hostile." Appellant stated that he and his coworkers had filed a grievance for a hostile work environment and were in the process of proceeding with an Equal Employment Opportunity (EEO) Commission complaint.

The record contains a handwritten "memo[ramum] for record" from Ms. Peryam confirming that she spoke to appellant on October 17, 2001 and asked him whether he was having personal problems. He had stomped out of her office the previous week stating he had too much pressure already that morning and did not want to deal with anything else. Ms. Peryam did not understand this comment considering what he had done that morning. She told him on October 17, 2001 that he had taken too much time in finding the problem with the fire alarm circuit at building 11369. Appellant admitted that he should have found the problem before the second day. Ms. Peryam continued:

"During the course of our conversation October [17, 2001] (a.m.) [appellant] said he thought he wanted a union representative there. I said fine, for him to set it up and we would continue the discussion. I stood up and again said to get whoever from the union. [Appellant] continued to talk so I sat back down and we continued to discuss this. He did not request union after I stopped upon his first request. I only continued [the] discussion after his continuation of this discussion and he never made a move from his chair."

On December 16, 2001 appellant submitted a statement signed by him and three of his coworkers. The statement alleged that the undersigned employees were subject to a hostile work environment by Ms. Peryam, who: did not permit them to finish sentences; misstated their comments and responded to attempts to clarify with intense arguments; elevated her voice and interjected argumentative and confrontational remarks; shouted loudly; addressed employees in a belligerent voice; lacked trust in the employees; scolded them; met their explanations with an accusative look that suggested they were lying; had an argumentative conversation with them on January 23, 2001 about sabotaging fire systems; was noncooperative regarding medical appointments; commented that she would like to see the shop contracted out; took the word of fire departments and contractors over that of the employees; and met requests for help and assistance with noncooperation and hostility. The statement cited instances involving appellant on March 17, 1997 and February 20, 1998.

Appellant and his coworkers affixed their signatures below the following: "We attest to witnessing or having knowledge of all, most or some of the events. Signing this statement does not reflect that each event was in fact witnessed by all that signed."

In a decision dated December 20, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that the employing

establishment was in error or abusive in its action toward him as a result of his morning meeting with Ms. Peryam on October 17, 2001. The Office found that the witness statement supporting that Ms. Peryam was becoming hostile in this meeting was mere perception and had no bearing. The other evidence submitted was of general application and also had no bearing on the claimed incident of October 17, 2001.

Appellant disagreed with this decision and requested a hearing before an Office hearing representative. At the hearing, which was held on July 9, 2002, appellant appeared and testified. He submitted a July 7, 2002 statement from a coworker supporting that appellant was extremely stressed after his morning meeting with Ms. Peryam on October 17, 2001. Appellant submitted a July 8, 2002 statement from another coworker attesting to the immediate effect of intense stress on appellant the moment he came downstairs from his meeting with Ms. Peryam on the morning of October 17, 2001. He also submitted a July 6, 2002 statement from his wife, who described how he had changed on October 17, 2002. Appellant submitted additional witness statements relating to other incidents.

Appellant also submitted an EEO counselor's report, in which Ms. Peryam stated that she did not believe that she had pointed at appellant, that she never pointed at him. When appellant told her that he felt intimidated, she told him that he should not be. Ms. Peryam admitted to cutting off other people's statements from time to time but was trying to get better about that. She stated that it was a two-way street, with the employees sometimes arguing with what she said. Ms. Peryam stated that she sometimes felt the same hostility from them. She did not realize that she talked down to the employees or raised her voice any louder than the person who was speaking to her or was argumentative, and sarcastic or had a mean attitude. Ms. Peryam did not feel that she had given the impression that her employees could not be trusted or that there would be repercussions. She denied ever telling them to shut up. Ms. Peryam did not want to get rid of their jobs and stated that there was no way a contractor could do what her shop does for the same amount of money.

In a decision dated October 1, 2002, the hearing representative affirmed the denial of appellant's claim. The hearing representative found that appellant had not provided evidence to support a compensable work factor. She found that the evidence was insufficient to support appellant's claim that Ms. Peryam was in error or abusive to appellant in a manner that would rise to the level of a compensable work factor. The hearing representative further found that most of the witness statements were of reduced probative value because they were prepared by appellant and were not in the witnesses' own words or did not indicate which incident they observed. Most of appellant's allegations, she noted, involved extremely subjective perceptions of the supervisor's tone and demeanor. With respect to the witness who overheard part of the October 17, 2001 meeting, the hearing representative found that there was no evidence to substantiate that the supervisor was yelling or screaming at appellant, only that her voice was raised. This was not sufficient to establish hostility. The hearing representative noted that the employees' involvement in the EEO complaint and other disputes tended to color their assessment and perception, while Ms. Peryam denied their allegations of hostile or inappropriate behavior.

The Board finds that the evidence is insufficient to establish that appellant sustained an emotional condition while in the performance of his duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.¹ An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,² neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;³ investigations;⁴ determinations concerning promotions and the work environment;⁵ discussions about an SF-171;⁶ reassignment and subsequent denial of requests for transfer;⁷ discussion about the employee's relationship with other supervisors;⁸ or the monitoring of work by a supervisor.⁹

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.¹⁰ Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.¹¹

In this case, appellant attributes his emotional condition to the treatment he received from his supervisor, Ms. Peryam and especially her conduct during their meeting on the morning of October 17, 2001. As a general matter his emotional reaction to supervisory actions lies outside scope of coverage of workers' compensation. To establish a compensable factor of employment, appellant must do more than allege error or abuse in these supervisory actions. He must substantiate error or abuse with probative and reliable evidence. Based on the evidence submitted in this case, the Board is unable to find that Ms. Peryam's interaction with appellant rose to the level of error or abuse.

Appellant submitted a statement from a witness who used a computer outside the office in which appellant and Ms. Peryam met on the morning of October 17, 2001. The witness supported that Ms. Peryam's voice grew louder during this meeting "and I could tell by the tone

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Joseph F. McHale*, 45 ECAB 669 (1994).

³ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

⁴ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁵ *Merriett J. Kauffman*, 45 ECAB 696 (1994).

⁶ *Lorna R. Strong*, 45 ECAB 470 (1994).

⁷ *James W. Griffin*, 45 ECAB 774 (1994).

⁸ *Raul Campbell*, 45 ECAB 869 (1994).

⁹ *Daryl R. Davis*, 45 ECAB 907 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945 (1993). See generally *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

that she was getting hostile.” Although this statement tends to support appellant’s account of Ms. Peryam’s tone, versus her account of what transpired, it provides an insufficient basis to require a finding by the Board of error or abuse in the exercise of supervisory discretion or in the discharge of supervisory responsibilities. The Board has recognized the compensability of verbal abuse in certain circumstances, but this does not imply that every statement uttered in the workplace will give rise to coverage under the Federal Employees’ Compensation Act.¹² The Board has specifically held that being spoken to in a loud and harsh voice does not constitute verbal abuse or harassment for purposes of workers’ compensation.¹³ As to content, appellant makes no allegation that on its face establishes error or abuse, and his perception of motives and intent cannot establish his claim for compensation. The record indicates that appellant has filed a grievance and an EEO complaint, however, the record does not indicate that those investigations produced formal findings or final decisions that establish error or abuse by Ms. Peryam toward him. Without such probative evidence, however, the record in this case fails to establish a firm factual basis for appellant’s claim.

Because appellant has failed to establish a compensable factor of employment, the Board need not review the medical evidence to determine whether his emotional condition is causally related to a compensable factor of employment.¹⁴

The October 1, 2002 and December 20, 2001 decisions of the Office of Workers’ Compensation Programs are affirmed.

Dated, Washington, DC
May 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Harriet J. Landry*, 47 ECAB 543 (1996).

¹³ *Judith A. Tobias*, Docket No. 98-1724 (issued April 14, 2000).

¹⁴ *See Norma L. Blank*, 43 ECAB 384 (1992).